

BEFORE THE
FEDERAL ELECTION COMMISSION

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COMMISSION

2012 SEP 18 AM 10:33

Ken Martin
Chair, Minnesota Democratic Farmer Labor Party
255 East Plato Blvd.
St. Paul, MN 55107

OFFICE OF GENERAL
COUNSEL

MUR # 6642

Complainant,

v.

One or more John Does,

Respondents.

COMPLAINT

Complainant files this complaint under 2 U.S.C. § 437g(a)(1) against one or more unidentified persons who have sponsored an anonymous communication in violation of the Federal Election Campaign Act ("the Act") and Federal Election Commission ("Commission") regulations.

A. Facts

Senator Amy Klobuchar is a candidate for re-election to the United States Senate from Minnesota. On or about August 21, 2012, Complainant identified a large billboard on Interstate 94, just west of Albertville, Minnesota. The billboard contained the text "FIRE KLOBUCHAR" in large black lettering on a yellow background. Below this, in smaller lettering, the billboard contained the text "NOT PAID FOR BY ANY CANDIDATE RUNNING FOR OFFICE." The billboard did not contain a statement identifying who paid for it. A photograph of the billboard is attached as Exhibit A.

The billboard also contained the logo of Franklin Outdoor Advertising, suggesting that Franklin leased the billboard in question to Respondents.

B. Legal Analysis

Under the Act and Commission regulations, all "public communications" that contain express advocacy are required to contain a disclaimer identifying who paid for the communication. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11. If the communication is authorized by a candidate and paid for by another person, it must clearly state the candidate who authorized the communication and the person who paid for the communication. If the communication is not authorized by a candidate or candidate's committee, the communication must clearly state the name and permanent street address, phone number, or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. "Public communications" include "outdoor advertising facilit[ies]," such as billboards. 11 C.F.R. § 100.26; see 2 U.S.C. § 441d(a).

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Because the billboard contains express advocacy, it is plainly subject to the Act's disclaimer requirements. There is only one way that the recipients of the message could, in fact, "fire" Senator Klobuchar – and that is by voting against her in the upcoming election. The phrase "FIRE KLOBUCHAR," then, is unambiguously an exhortation to vote against Senator Klobuchar. See 11 C.F.R. § 100.22. Accordingly, the advertisement was required to contain a "paid for by" disclaimer and an authorization statement in a printed box.

In addition to failing to include the required disclaimer, Respondents may have committed other violations of the Act. Because it contains express advocacy, if the communication was not made in coordination, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, it would qualify as an "independent expenditure." 11 C.F.R. § 100.16(a). Depending on the amount spent and when the advertisement was first distributed, this may have triggered an obligation to file 48-hour or 24-hour reports. 2 U.S.C. § 434(g).¹

Furthermore, if Respondents spent more than \$1,000 on the billboard, they may have triggered political committee status, obligating them to register and report with the Commission. 2 U.S.C. § 431(4)(a). And, even if they did not, if they spent more than \$250 on the billboard, they would be required to file periodic disclosure reports with the Commission. 2 U.S.C. § 434(c)(1); 11 C.F.R. § 109.10(b).

C. Conclusion

Minnesota voters have a right to know the identity of those who try to influence its elections. To this end, we respectfully request the Commission to investigate to determine the true sponsor of the billboard and determine whether Respondents have committed additional violations of the Act by failing to register or file reports with the Commission. We further request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



SUBSCRIBED AND SWORN to before me this 24 day of August, 2012.



¹ The Minnesota Senate primary was held on August 14. If the cost of the advertisement exceeded \$1,000 and it was distributed in the 20 days leading up to the primary election, the expenditure would have had to be reported within 24 hours. 2 U.S.C. § 434(g)(1).

Linda McEwen
Notary Public

My Commission Expires:

January 31, 2017

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FEC complaint - anonymous sign_KEN MARTIN DFL

Corey Day

to:

fhampton

09/18/2012 12:29 PM

Cc:

"Ken Martin", "Corey Day"

Hide Details

From: "Corey Day" <cday@dfi.org>

To: <fhampton@fec.gov>,

Cc: "Ken Martin" <kmartin@dfi.org>, "Corey Day" <cday@dfi.org>

1 Attachment



image001.jpg

